IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 876 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SARDAR GURUDAYALSINGH NIHARSINGH

Versus

KANTIBHAI SHIVABHAI PATEL

Appearance:

1. Civil Revision Application No. 876 of 1983

MR HB SHAH for Petitioner No. 1

MR DR BHATT for Petitioner No. 1

MR NILESH A PANDYA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/08/2002

ORAL JUDGEMENT

This is a revision application under section 29(2) of the Bombay Rents, Hotels and Lodging House Rates

(Control) Act, 1947, (for short, 'the Act') challenging the judgment and decree dated 31.8.1982 recorded by the learned 4th Extra Asstt. Judge, Vadodara in Regular Civil Appeal No.145/80 confirming the judgment and decree dated 29.2.1980 recorded by the learned Additional Judge of the Small Causes court at Vadodara in Rent Suit No.492/78, under which the learned Judge granted a decree for eviction of the petitioner from the tenanted property. The first respondent herein preferred the aforesaid Civil Suit before the Small Causes Court at Vadodara for eviction of the petitioner from the tenanted property on various grounds. Learned Advocate for the respondent contended that the petitioner herein was a tenant in arrears in rent for exceeding six months on the date of notice under section 12(2) of the said Act, and neglected to make payment of rent then due within month from the date of notice. It was, therefore, contended that the present petitioner had sublet, assigned or transferred his interest in the tenanted property in favour of co-respondent. The first respondent also contended that the suit premises were required reasonable and bonafide for personal use and occupation. Accordingly, the said suit was filed and the decree for eviction of the petitioner from the suit property and possession of the tenanted premises were sought for.

2. The suit was resisted by the petitioner and after settling the issues, the learned trial Judge found that the respondent had proved all those grounds. The trial court also found that the petitioner herein was not likely to be put to hardship if the decree was passed in favour of the first respondent. Accordingly, a decree was passed for eviction of the petitioner and for possession of the tenanted property in favour of the first respondent.

3. Feeling aggrieved by the said judgment and decree of the learned Judge of the Small Causes Court at Vadodara, the petitioner preferred Regular Civil Appeal No.145/80 under section 29 of the said Act. The learned 4th Extra Asstt.Judge, Vadodara, heard the appeal, considered all relevant materials placed before him and after hearing the parties, the learned Judge found that the learned Judge of the Small Causes Court was perfectly justified in passing a decree for eviction of the petitioner from the tenanted property and for possession of the tenanted property in favour of respondent no.1. Accordingly, he was pleased to dismiss the said appeal by judgment and decree dated 31.8.1992.

4. Feeling aggrieved by the said judgment and decree

of the learned 4th Extra Assistant Judge, the original defendant-tenant has preferred this revision application before this Court under section 29(2) of the Act. It has been contended here that the two courts below have committed serious illegality in not considering the provisions contained under section 12(3)(b) of the Act. That the two courts have committed serious illegality in holding that the case was governed under section 12(3)(a) of the Act. That the two courts have committed serious illegality in fixing the standard rent as has been done by the trial court during the course of the judgment. That the courts below have committed serious illegality in holding that the respondent required the suit premises for his personal use and occupation. It is also contended that the two courts below have committed serious illegality in holding that the landlord was likely to face greater hardship if the decree for eviction was refused. It is further contended that the two courts below have committed illegality in holding that the present petitioner had unlawfully sublet, assigned or transferred his interest in favour of respondent no.2, whose name has been deleted after wards. That on the whole the judgments and decrees of the two courts below are illegal and perverse and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed, the judgment and decrees of the two courts below be set aside and the suit of the first respondent herein be ordered to be dismissed with costs all throughout.

5. On receipt of the revision, rule was issued and Mr N A Pandya, learned advocate appears for respondent no.1. Name of respondent no.2 has been subsequently deleted. It is not much in dispute that respondent no.2 who was the sub-tenant, had subsequently handed over possession of a portion of the property in his possession to the first respondent and, therefore, his name has been deleted from the cause title.

6. I have heard the learned advocate for the parties and have perused the papers.

Learned Advocate for the petitioner has heavily attacked on the findings of the two courts below saying that the two courts below have committed serious illegality in holding that the petitioner was a tenant in arrears for exceeding six months on the date of the notice under section 12(2) of the Act. On going through the records, it is amply clear that the two courts below have considered the pros and cons of the record. They have considered the oral and documentary evidence on

record and on appreciation of the materials before them, the two courts below have recorded concurrent finding of fact that the petitioner was a tenant in arrears of rent for exceeding six months on the date of notice under section 12(2) of the Act. They have also recorded finding of fact that the petitioner herein neglected to make payment of rent then due within one month from the date of receipt of notice under section 12(2) of the act. In above view of the matter, the two courts below were perfectly justified in holding that the case before them was governed by section 12(3)(a) of the Act. Once it is found that the case is governed under section 12(3)(a) then in that event, it becomes obligatory duty on the part of the court to award decree for possession. No discretion has been left with the court in the matter. Therefore, the two courts below were perfectly justified in awarding the decree for possession in favour of respondent no.1. Even with respect to the other two grounds, the evidence was there on record to show the personal requirement which was found to be reasonable and bonafide, on issue of hardship, it has also been considered by the two courts below and both have rightly concluded that greater hardship will be caused to the first respondent if the decree is refused. On the other hand, they have also recorded finding that greater hardship would not be caused to the tenant if decree for eviction is awarded. In above view of the matter, the two courts below were also justified in awarding the decree for possession in favour of respondent no.1 on the ground of reasonable and bonafide personal requirement under section 13(1)(g) of the said Act.

7. So far as unlawful sub-letting is concerned, the fact that the second respondent has voluntarily handed over possession of the portion of the tenanted property to the first respondent, itself goes to suggest that there was ample material before the two courts below about the fact of unlawful subletting by the petitioner in favour of the second respondent. The two courts below have recorded concurrent finding of fact on all the three issues. They have also recorded finding, on appreciation on material before them, that the standard rent was required to be fixed in accordance with the order of the trial court. In that view of the matter, when findings of facts are based on materials on record, there is no need to alter the same. This revision application accordingly deserves to be dismissed.

At this stage, learned Advocate for the petitioner states that the petitioner is a resident of Vadodara and it would be extremely difficult for this

petitioner to find out a suitable residential accommodation. It is also his case that Vadodara has been developed to a great extent and therefore, availability of a residence at a reasonable rate is hardly possible. In that view of the matter, it would be appropriate to grant some time to the petitioner for handing over possession of the tenanted property to the first respondent and for complying with the requirement of the decree recorded by the two courts below.

8. For the foregoing reasons, this revision application is dismissed. The judgments and decrees passed by the two courts below are ordered to be confirmed. Rule is discharged. There shall be no order as to costs. However, the petitioner is given time upto 30.4.2003 for vacating the suit premises and for handing over vacant possession thereafter to the first respondent on the condition that the petitioner submits an undertaking on oath on usual terms before the trial court within one month from today.

1.8.2002 [D P Buch, J.]
msp